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There may be additional cases other than Adair. I worked on something involving these cases years ag.

Adair v. Commissioner, TCM 1995-493. Section 911 provides a limited exclusion from the gross income of an individual for the foreign earned income of the individual. Section 911(b)(1)(B)(ii) provides that the foreign earned income for an individual shall not include amounts paid by the United States or an agency thereof to an employee of the United States or an agency thereof. The petitioner in Adair sought to exclude from gross income amounts that he received as remuneration for services he performed for the North Atlantic Treaty Organization (NATO), an international organization, to which he had been transferred from the United States Army pursuant to 5 USC 3582. The Government argued that the petitioner was an employee of the United States during the period of his transfer. If the petitioner was an employee of the United States in the performance of services for NATO, the section 911 exclusion would not apply. Because there is no special definition of employee under section 911, the common law rules applied in determining whether the petitioner was an employee of the United States or NATO with respect to the services performed. The court found that the petitioner was an employee of NATO and not of the United States (or an agency thereof) during the period of the transfer to the international organization.

The court noted that the benefits and rights that the petitioner retained with respect to federal employment were not determinative of the employment relationship. "The determination of whether petitioner was an employee of the United States depends on all the facts and circumstances, including the paramount fact that NATO, more than the United States, controlled the manner in which his work was performed." The court noted in particular that several facts indicated that "petitioner was separated from U. S. Government service during his transfer to NATO." The court noted that the existence of the right to reemployment indicated that the petitioner ceased employment with United States Government when he transferred to NATO. The court also noted that his annual leave account could be liquidated upon transfer, as with separated employees. The court also indicated the intent of the United States Government was that the transfer was to be a change in position. The court indicated that the specific statutory provision for the retention of certain rights and benefits (retirement, health, and workers'

compensation coverage) with respect to federal employment indicated that the petitioner was not a federal employee for other purposes.